

304.15-717 Circumstances under which viatical settlement transactions are unlawful -- Required statement regarding false information -- Furnishing information regarding fraudulent viatical acts.

- (1) It is unlawful for any person:
 - (a) To knowingly or intentionally enter into a viatical settlement contract when the subject life insurance policy was obtained by means of a false, deceptive, or misleading application for the life insurance policy;
 - (b) To knowingly or intentionally interfere with the enforcement of the provisions of this subtitle or investigations of suspected or actual violations of this subtitle;
 - (c) To knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements as defined in KRS 304.15-020(4);
 - (d) To commit a fraudulent viatical settlement act;
 - (e) To misrepresent that the viatical settlement provider, viatical settlement broker, other licensee, or any other person has been guaranteed, sponsored, recommended, or approved by the state, or by any local, state, or federal agency or officer thereof;
 - (f) To act as a viatical settlement broker if the person is acting as a viatical settlement provider in the same viatical settlement contract; and
 - (g) For any person to pay any compensation or provide anything of value to an insured's physician, attorney, accountant, or any other person who provides medical, legal, or financial advice to the insured as a finder's or referral fee.

This subsection shall not prohibit a statement that the person is licensed, if that statement is true and the effect of the statement is not misrepresented.

- (2) A viatical settlement contract and an application for a viatical settlement contract, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and upon conviction may be subject to fines or confinement in prison, or both."

The lack of a statement required by this section does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

- (3)
 - (a) A person engaged in the business of viatical settlements who has knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed shall provide the information required to the executive director, in a manner prescribed by the executive director.
 - (b) Any person who has knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed may provide the information required to the executive director, in a manner prescribed by the executive director in administrative regulations.

- (4) (a) Civil liability may not be imposed on and a cause of action may not arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent viatical settlement acts, or suspected or completed fraudulent insurance acts, if the information is provided to or received from:
1. The executive director or the executive director's employees, agents, or representatives;
 2. Federal, state, or local law enforcement or regulatory officials, or their employees, agents, or representatives;
 3. A person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees, or representatives;
 4. The National Association of Insurance Commissioners (NAIC), the National Association of Securities Dealers (NASD), the North American Securities Administrators Association (NASAA), or their employees, agents, or representatives, or any other regulatory body overseeing life insurance or viatical settlement contracts; or
 5. The insurer that issued the policy covering the life of the insured.
- (b) This subsection shall not apply to a statement made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that this subsection shall not apply because the person filing the report or furnishing the information did so with actual malice.
- (c) A person who furnishes information concerning fraudulent viatical settlement acts and who is a party in a civil cause of action for libel, slander, or another relevant tort arising out of activities in carrying out the provisions of this chapter shall be entitled to an award of attorney's fees and court costs if he is the prevailing party in the suit and the party bringing the action was not substantially justified in filing the cause of action. For purposes of this paragraph, a proceeding is "substantially justified" if a person had a reasonable basis in law or fact at the time the cause of action was initiated.
- (d) This subsection shall not abrogate or modify common law or statutory privileges or immunities enjoyed by a person.
- (e) This subsection shall not apply to a person who furnishes information concerning his own suspected, anticipated, or completed fraudulent viatical settlement acts or suspected, anticipated, or completed fraudulent insurance acts.
- (5) The documents and evidence provided pursuant to subsection (4) of this section or obtained by the executive director in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action, except that:

- (a) This subsection shall not prohibit release by the executive director of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:
 - 1. In administrative or judicial proceedings to enforce laws administered by the executive director;
 - 2. To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the National Association of Insurance Commissioners (NAIC); or
 - 3. At the discretion of the executive director, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.
- (b) The release of documents and evidence provided by paragraph (a) of this subsection shall not abrogate or modify the privilege granted by this subsection.
- (6) This section shall not:
 - (a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;
 - (b) Prevent or prohibit a person from voluntarily disclosing information concerning fraudulent viatical settlement acts to a law enforcement or regulatory agency other than the Office of Insurance; or
 - (c) Limit the powers granted elsewhere by the laws of this state to the executive director or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.
- (7) A viatical settlement provider shall adopt antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. The executive director may order or, if a licensee requests, may grant modifications of the required initiatives listed in this subsection as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications reasonably may be expected to accomplish the purpose of this section. Antifraud initiatives shall include the following:
 - (a) Fraud investigators, who may be viatical settlement providers or employees or independent contractors of those viatical settlement providers; and
 - (b) An antifraud plan submitted to the executive director that shall include but is not limited to the following:
 - 1. The procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;
 - 2. The procedures for reporting possible fraudulent viatical settlement acts to the executive director;

3. The plan for antifraud education and training of underwriters and other personnel; and
4. A chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 58, sec. 12, effective June 20, 2005. -- Created 2000 Ky. Acts ch. 472, sec. 6, effective July 14, 2000.

Legislative Research Commission Note (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.